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Comptroller General
of the United States

United States General Accounting Office

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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229778 Sept. 2, 1988

Cashiers

Relief

Physical losses

Theft

Relief is granted to imprest fund cashiers for apparent shortage in imprest funds discovered on May 20, 1982 at U.S. Customs Service office in Seattle, Washington. Six individuals had access to safe where locked cash boxes and their keys were kept, making it impossible to determine whether negligence on the part of any one individual caused the apparent loss. Additionally, GAO agrees with agency finding that the pervasive laxity of fund accounting and control procedures rather than negligence of imprest fund cashiers, was the proximate cause of the apparent loss. Relief is granted in the corrected amount of \$1168.08.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-230606.2 Sept. 6, 1988

Cashiers

Relief

Physical losses

Theft

Where disappearance of funds from a USIS Building in Teheran was the result of a terrorist attack, a cashier is relieved of liability because negligence on his part, if any, was not the proximate cause of the loss.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims by Government B-227726.2 Sept. 9, 1988
Private relief bills
Debt collection
Waiver

The spouse of a retired member of the Air Force was erroneously issued invitational orders to accompany him to a convention and awards ceremony at which he was a guest speaker, and she was reimbursed for the travel costs. However, the spouse was not entitled to any of the reimbursed expenses because the Joint Travel Regulations, vol. 2, paras. C6001-3 and C6001-4, prohibit departments from authorizing invitational travel at government expense for dependents and relatives to attend conferences and award ceremonies. We submit a report to the Congress on the claim which we believe, based on the equitable considerations present in the case, deserves consideration as a meritorious claim.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-231551 Sept. 12, 1988
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Regional Director of Treasury Finance Center is relieved of liability for erroneous payment that resulted from issuance of duplicate check based on a subordinate's failure to verify the existence of the purported mutilated check before preparing a replacement.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims by Government B-229620 Sept. 14, 1988
Set-off
Propriety

The monetary claim involved in the Equal Employment Opportunity Commission's judgment against a defaulted government contractor represents a back pay award to two individuals. Since this claim is not a debt directly owed to the government, it is not the proper subject of a setoff.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-232504 Sept. 19, 1988
Cashiers
Relief
Illegal/improper payments
Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing officers
Relief
Illegal/improper payments
Forgeries

U.S. Army finance officer is relieved of liability for the improper payments of checks on forged endorsements made by subordinate cashiers where the officer maintained and supervised an adequate system of procedures designed to prevent such improper payments. The cashiers are also relieved where they complied with existing procedures and the loss resulted from criminal activity over which the officer and the cashiers had no control.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-232321 Sept. 20, 1988

Cashiers

Relief

Illegal/improper payments

Computation errors

Relief is granted to four Drug Enforcement Agency imprest fund cashiers under 31 U.S.C. § 3527(a), from liability for a loss of \$3,889.27. GAO agrees with the conclusion that the loss was the result of the complexity of the fund and lack of adequate accounting safeguards beyond the control of the cashiers.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-231720 Sept. 21, 1988

Claim settlement

Amount determination

Air carriers

Japan Air Lines (JAL) refused to provide through joint-line service from Okinawa to Seattle, Washington, with Northwest Airlines at a reduced military (category Z) fare that had been published in a tariff by Northwest and requested on a Government Transportation Request (GTR). JAL indicated that it was not a party to that fare. The Air Force then issued a second GTR requesting through service at a higher economy class fare solely to avoid delay in a member's emergency leave travel. The through service was performed by JAL to Tokyo and by Northwest to Seattle but the Air Force allowed JAL only the reduced military fare. The carrier's claim for the higher economy class fare should be allowed for the portion of the service JAL performed on the initial leg from Okinawa to Tokyo on the basis of the terms of the parties' agreement. The fare for the balance of the trip via Northwest is properly limited to the reduced military fare.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-230863 Sept. 23, 1988
Disbursing officers
Relief
Illegal/improper payments
Travel allowances

Relief is granted to Army disbursing officers in a case involving fraudulent travel vouchers. The results of a thorough Army review indicate that there is nothing in the pertinent vouchers which would have given notice of possible fraud. There is no evidence in the record of any reason for the accountable officers to have been suspicious of the fraudulent nature of the transactions. The improper payments were the result of criminal activity over which the accountable officers had no control. There is no indication that the payments were the result of bad faith or lack of reasonable care. Even the most carefully established and effectively supervised system cannot prevent every conceivable form of criminal activity.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-232615 Sept. 28, 1988
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted former Defense Logistics Agency disbursing official under 31 U.S.C. § 3527(c) from liability for two improper payments resulting from payee twice negotiating an original and recertified check. In both instances, proper procedures were followed in the issuance of the recertified checks, there was no indication of bad faith on the part of the former disbursing official, and subsequent collection attempts are being pursued.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-227321 Sept. 1, 1988

**Compensation
Overpayments
Error detection
Debt collection
Waiver**

An employee was reduced in grade at his request, from grade GS-8, step 4, to grade GS-7, step 8, in order to enter a professional job series. The agency later determined that the employee's salary should have been set at the step 7 level of grade GS-7. The employee's claim for waiver of the overpayment is granted since he had no specialized knowledge of the federal pay system. His memorandum requesting the downgrading and stating the grade, step level, and salary he expected to receive was based upon instructions from the agency personnel office.

CIVILIAN PERSONNEL

B-230392 Sept. 1, 1988

**Compensation
Retroactive compensation
Eligibility
Travel expenses**

The Internal Revenue Service seeks to make a retroactive payment to employees for meals and incidental expenses incurred on first and last days of travel during the period from July 1, 1986, to August 1, 1987, when the Federal Travel Regulations required that such expenses be computed on a half-day rather than a quarter-day basis. The regulations were changed to require a quarter-day computation effective August 1, 1987. Inasmuch as the half-day regulation in effect during the period in question had the force and effect of law, and the employees' rights and liabilities with regard to per diem and travel allowances vested at the time travel was performed, the half-day regulation may not be waived or modified by an employing agency or this Office. Accordingly, there is no authority to retroactively apply the quarter-day computation.

CIVILIAN PERSONNEL

B-230854 Sept. 1, 1988

Compensation

Federal retirement system

Retirement plans

Service credits

An agency may not set an employee's interest-free period for deposit into the Civil Service Retirement System for post-1956 military service beyond the date set by statute. Where a statutory provision is unambiguous and its directions specific, its plain meaning may not be altered or extended by administrative action.

CIVILIAN PERSONNEL

B-226708 Sept. 6, 1988

Compensation

Civilian service

Determination

The Office of Regulatory Policy, Oversight and Supervision, and the Office of Finance purport to be entities outside of the Federal Loan Bank Board whose employees, therefore, are not regarded as federal employees subject to title 5 of the United States Code. However, both of these offices are subject to complete control by the Bank Board, which appoints their principal officers, prescribes their functions, and controls their budgets. In view of these considerations, GAO concludes that the employees of these offices should be treated as federal employees.

**CIVILIAN PERSONNEL
Compensation
Civilian service
Determination**

**B-226708 Con't
Sept. 6, 1988**

The Federal Asset Disposition Association (FADA) purports to be a federal savings and loan association established under section 406 of the National Housing Act. Therefore, its employees are not regarded as being federal employees subject to title 5 of the United States Code. However, FADA performs none of the basic functions of a federal savings and loan association and its stock is owned entirely by federal agencies. Therefore, GAO concludes that FADA cannot properly be regarded as a federal savings and loan association under section 406. Even if FADA could be regarded as a federal savings and loan association, it is, in fact, a corporation chartered by the federal government which is also wholly owned by the federal government. Therefore, its employees should be regarded as federal employees subject to title 5 of the United States Code.

The Federal Home Loan Bank System Publication Corporation and the Bank System Office of Education have a clear existence outside of the Bank Board itself and are not subject to plenary control by the Bank Board. Therefore, GAO agrees with the Bank Board that the employees of these two entities should not be regarded as federal employees subject to title 5 of the United States Code.

**CIVILIAN PERSONNEL
Compensation
Compensation restrictions
Applicability**

The Federal Home Loan Bank Board is an "agency" within the application of the Classification Act, 5 U.S.C. §§ 5101 et seq. Therefore, its employees are subject to the salary limitations of title 5, United States Code.

CIVILIAN PERSONNEL

B-228630 Sept. 6, 1988

Relocation

Household goods

Shipment costs

Advance payments

Overpayments

In transporting his household goods to his new duty station, the employee used as expedited service charging him for a minimum of 5,000 pounds of household goods, even though he only shipped 922 pounds. His indebtedness for the difference between the travel advance he received based on an estimated weight of 5,000 pounds and the charge at the commuted rate for 922 pounds may be waived under 5 U.S.C. § 5584, if he was told that he was entitled to the expedited service for the lesser weight which would cost the equivalent of shipping 5,000 pounds.

CIVILIAN PERSONNEL

B-230848 Sept. 6, 1988

Relocation

Miscellaneous expenses

Reimbursement

Eligibility

CIVILIAN PERSONNEL

Relocation

Temporary quarters

Actual subsistence expenses

Dependents

Eligibility

A transferred employee claims temporary quarters subsistence expenses (TQSE) on behalf of his daughter who remained in temporary quarters after the employee moved into permanent quarters. His claim is denied under the provisions of the Federal Travel Regulations (FTR) governing miscellaneous expense reimbursement as well as TQSE. Miscellaneous expense reimbursement may not include expenses denied under other provisions of the FTR. The claim is denied under the regulations governing TQSE reimbursement since the employee moved into permanent quarters.

CIVILIAN PERSONNEL
Leaves of Absence
Leave accumulation
Use

B-229168 Sept. 7, 1988

CIVILIAN PERSONNEL
Leaves of Absence
Leave repurchase
Administrative policies
Authority

Under the provisions of the Federal Employees' Compensation Act, an employee who uses annual or sick leave during absences from work in connection with work-related injuries or illnesses may "buy back" or repurchase such leave and accept workers' compensation for the period of such absences under the Act. We hold that an employee may not use accumulated annual or sick leave in order to liquidate an indebtedness owed the agency since annual and sick leave may not be converted into a monetary equivalent in these circumstances. See Donald R. Manning v. United States, 7 Cl. Ct. 128, 133 (1984).

CIVILIAN PERSONNEL
Compensation
Personnel death
Balances
Payees

B-226914 Sept. 9, 1988

The disposition of the unpaid compensation of a deceased federal civilian employee is governed by the order of precedence in 5 U.S.C. § 5582(b) (1982). Where a claimant has sufficiently established that she had a common-law marriage with the employee and thus was his widow, this determination places her in a higher order of precedence than the employee's children for claiming unpaid compensation.

CIVILIAN PERSONNEL
Leaves of Absence
Accrual
Eligibility

B-229170 Sept. 9, 1988

CIVILIAN PERSONNEL
Leaves of Absence
Annual leave
Accrual
Retroactive adjustments

CIVILIAN PERSONNEL
Leaves of Absence
Sick leave
Accrual
Retroactive adjustments

Employees were appointed on a when-actually-employed or intermittent basis. While they generally worked the same schedule over a period of time, this alone does not constitute a regularly scheduled tour of duty. Therefore, the employees are not entitled to retroactive annual and sick leave benefits.

CIVILIAN PERSONNEL
Travel
Travel expenses
Reimbursement
Interrupted leave

B-231458 Sept. 9, 1988

An employee, who was recalled to duty soon after departing on annual leave, may not be reimbursed the travel expenses to his leave destination. Airfare to the employee's vacation destination was in the nature of a personal expense which does not become a government obligation following cancellation of annual leave.

Relocation
Household goods
Actual expenses
Reimbursement
Amount determination

The transportation of an employee's household goods was authorized by a method to be determined by the employing agency, either at the commuted rate or by a Government Bill of Lading. Before the agency determined the method, the employee transported the household goods in a rented truck, and is therefore limited to reimbursement of his actual out-of-pocket costs attributable to the transportation of the household goods.

Reimbursement of the out-of-pocket costs an employee incurred in transporting his household goods prior to the agency's determination of the method to be used may include a one-way trip rental of a truck. The reimbursement may not include any charge at a daily rate for a stopover en route, a gasoline charge unless it is shown that it was not included in the one-way trip rental; rental of a tow bar for towing the employee's privately owned automobile, nor insurance for the household goods because it was not necessarily a cost attributable to the transportation.

CIVILIAN PERSONNEL
Relocation
Travel expenses
Rental vehicles
Mileage

Mileage is allowable only for use of a privately owned vehicle in traveling to a new duty station. Consequently mileage is not payable for towing an automobile by a rental truck used to haul household goods.

CIVILIAN PERSONNEL

B-229390 Sept. 14, 1988

Relocation

Residence transaction expenses

Reimbursement

Eligibility

Effective dates

In the absence of evidence that the employing agency definitely intended to transfer the employee at the time he incurred real estate selling expenses, reimbursement of the expenses is denied. A summary of the employee's daily log shows that when the expenses were incurred there was only an indefinite proposal to transfer the employee. Any transfer was contingent on events which would not necessarily occur in the reasonably foreseeable future.

CIVILIAN PERSONNEL

B-229447 Sept. 14, 1988

Compensation

Retroactive compensation

Eligibility

Discretionary authority

An employee who was hired at a certain grade level may not receive backpay retroactive to the date of his appointment merely because the employing agency subsequently placed him in a higher step of the grade level and then promoted him to a higher grade level, after it had determined that his education and experience qualified him for the higher grade and step than he was given when appointed. An appointment at a higher level would have been discretionary rather than mandatory. Consequently, at the time of appointment there was no administrative error depriving the employee of a legal right to be hired above grade level in which he was appointed.

CIVILIAN PERSONNEL**B-227322 Sept. 19, 1988****Compensation****Overpayments****Error detection****Debt collection****Waiver**

Waiver must be denied when an employee was aware that he was being overpaid after an erroneous within-grade step increase. Although the employee immediately notified the agency and although long administrative delays resulted before correction of the overpayment occurred, we have consistently held that when an employee is aware of an error the employee cannot reasonably expect to retain the overpayment.

CIVILIAN PERSONNEL**B-230741 Sept. 19, 1988****Relocation****Residence transaction expenses****Miscellaneous expenses****Reimbursement**

A transferred employee sold his cooperatively owned residence. He seeks reimbursement for a resale waiver fee or "flip tax" charged him by the cooperative which allowed him to dispose of his interest on the open market. Real estate expense reimbursements are strictly governed by the Federal Travel Regulations, and a resale waiver fee is not reimbursable under those regulations. William D. Landau, B-226013, Oct. 28, 1987.

CIVILIAN PERSONNEL

B-229368 Sept. 20, 1988

Relocation

Residence transaction expenses

Reimbursement

Amount determination

Lot sales

Transferred employee sold 40-acre parcel of land which contained his residence in a sparsely populated, rural part of Montana. Proration of sales expense reimbursement is necessary due to income-producing potential of the excess land. Values contained in local tax assessment should be used in determining the percentage of proration where it is the best evidence of relative values available and it is shown to be more reliable than values shown in a real estate listing agreement.

CIVILIAN PERSONNEL

B-228691 Sept. 21, 1988

Relocation

Residence transaction expenses

Loan origination fees

Reimbursement

Amount determination

A transferred employee who purchased a residence in December 1986 at his new duty station claims reimbursement for a 3 percent loan origination fee. The employing agency disallowed the entire fee on the ground it was a nonreimbursable finance charge. Since the loan origination fee includes points and a discount, we agree that the full 3 percent may not be reimbursed, but we allow a 1 percent fee as a customary charge in the area.

CIVILIAN PERSONNEL

B-229181 Sept. 22, 1988

Travel

Permanent duty stations

Actual subsistence expenses

Prohibition

Per diem or subsistence expenses may not be paid to an employee at his permanent duty station except in limited emergency situations involving the protection of life or federal property. If no emergency exists payment of these expenses is not authorized.

CIVILIAN PERSONNEL

B-209764.2 Sept. 26, 1988

Travel

Temporary duty

Travel expenses

Reimbursement

Personal convenience

An employee on temporary duty was forced to miss his scheduled flight so that he could board his young son on a delayed flight. The unforeseen delay in his son's flight resulted in an additional \$411 cost because only business class space was available on the later flight the employee took. The additional expense for the employee's flight may not be allowed under the Federal Travel Regulations. When an employee changes travel plans for personal or family reasons, he must bear any additional cost incurred.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-227726.2 Sept. 9, 1988

Travel

Travel expenses

Eligibility

Dependents

The spouse of a retired member of the Air Force was erroneously issued invitational orders to accompany him to a convention and awards ceremony at which he was a guest speaker, and she was reimbursed for the travel costs. However, the spouse was not entitled to any of the reimbursed expenses because the Joint Travel Regulations, vol. 2, paras. C6001-3 and C6001-4, prohibit departments from authorizing invitational travel at government expense for dependents and relatives to attend conferences and award ceremonies. We submit a report to the Congress on the claim which we believe, based on the equitable considerations present in the case, deserves consideration as a meritorious claim.

MILITARY PERSONNEL

B-228767 Sept. 14, 1988

Pay

Retirement pay

Personnel death

Beneficiaries

Where a designated beneficiary for purposes of retired pay fails to file a claim and cannot be located within 3 years after a member's death, the person next in order of precedence, here the surviving spouse, is entitled to the unpaid retired pay of the member pursuant to 10 U.S.C. § 2771(a) (1982) and 4 C.F.R. § 34.3(c) (1988).

Travel

Overseas travel

Dependents

Travel expenses

Reimbursement

A member who was transferred to an overseas duty station did not have custody of his minor child by a prior marriage at the time of his transfer. Thereafter, the member gained custody of the child, and he seeks reimbursement for the dependent's travel to his overseas location. Reimbursement is allowed. Under the provisions of paragraphs U5203-B11, U5203-B18 and U5215-I of volume 1, Joint Federal Travel Regulations, a dependent child may be transported at government expense to a member's overseas location between transfer assignments so long as the purpose is to change the dependent's permanent residence. Chief Warrant Officer Michael W. Pennington, USA, B-227594, June 8, 1988.

A member was transferred to an overseas duty station and acquired custody of his minor child by a prior marriage between transfer assignments, but with less than 1 year of duty remaining at that station. His right to transport that minor child to his overseas location at government expense for permanent residency purposes is governed by paragraph U5203-B18 of the Joint Federal Travel Regulations, which specifically authorizes that travel when a member acquires custody of a dependent child between overseas transfer assignments. Chief Warrant Officer Michael W. Pennington, USA, B-227594, June 8, 1988.

MILITARY PERSONNEL

B-206699.1; B-206699.2

Pay

Sept. 15, 1988

**Overpayments
Error detection
Debt collection
Waiver**

Several thousand military Reserve technicians received overpayments of compensation between December 1981 and December 1982 as the result of an error in the application of a statute limiting their combined military and civilian compensation to the rate payable for level V of the Executive Schedule. It is also reported that several thousand Army members have been overpaid because of minor errors made in fixing the constructive date to be used in determining their length of federal service. No collection action is necessary since the individual overpayments are small, the administrative costs of attempted collection would be excessive, and all overpayments would be eligible for waiver on an individual case basis.

MILITARY PERSONNEL

B-228817 Sept. 22, 1988

**Relocation
Household goods
Weight restrictions
Liability
Waiver**

This letter denies a request for waiver of a debt resulting from shipments of household goods incident to a permanent change of station. The shipments took place in June and July 1985. Presumably, payment was made shortly thereafter. The statutory provision allowing the waiver of erroneous payments of transportation allowances applies only to such payments made on or after December 28, 1985. 10 U.S.C. § 2774 note (Supp. III 1985).

Pay**Survivor benefits****Annuity payments****Eligibility**

A woman, whose divorce from her first husband was not final, married a second husband. Her first husband subsequently died and her third marriage was to an Army member who later died. Her claim as the beneficiary of the member's Survivor Benefit Plan annuity may be allowed since her second "marriage" was bigamous and legally invalid, her first marriage ended with the death of her first husband, and she did not contract any other legal marriages until she married the Army member.

PROCUREMENT

PROCUREMENT

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

**B-228938.5 Sept. 1, 1988
88-2 CPD 199**

PROCUREMENT

**Competitive Negotiation
Discussion
Bad faith
Allegation substantiation**

Prior decision is affirmed where, in request for reconsideration, protester alleges that procuring agency evaluated its proposal in bad faith without furnishing any corroborative evidence of this fact and the record of the evaluation process does not support the contention. The protester has not affirmatively proven its case, since in order to show bad faith there must be irrefutable proof that contracting officials had a specific intent to harm the protester.

PROCUREMENT

**Bid Protests
GAO procedures
Interested parties
Direct interest standards**

**B-231343.2 Sept. 1, 1988
88-2 CPD 200**

Protest by firm that is not next in line for award if its protest were sustained is dismissed since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT

B-231427 Sept. 1, 1988

Special Procurement

88-2 CPD 201

Methods/Categories**Service contracts****Management services****Multiple/aggregate awards****Justification**

Department of Housing and Urban Development (HUD) did not act improperly in awarding contract to a second vendor for management services for HUD properties in Kern County, California, even those protesters had a contract to provide the same services; under the terms of the protester's contract, the agency was entitled to limit the number of properties assigned to it and to award another contract for properties in excess of that number.

PROCUREMENT

B-231552.2 Sept. 1, 1988

Contractor Qualification

88-2 CPD 202

Responsibility**Contracting officer findings****Affirmative determination****Prior contract performance**

Contention that definitive responsibility criterion requiring successful erection of a dry fly ash collection facility of similar magnitude and approximate dollar value as facility required under solicitation was not met is without merit where the proposal contained information from which the contracting officer reasonably could conclude that the offeror's proposed subcontractor had successfully erected a comparable facility. The relative quality of the information provided and the need for further investigation are within the discretion of the contracting officer.

PROCUREMENT

B-231554 Sept. 1, 1988

Bid Protests

88-2 CPD 203

Non-prejudicial allegation

GAO review

Protester is not prejudiced by agency's failure to inform firms solicited under oral request for quotations of the specific experience the agency considered necessary to meet its training needs where protester does not assert that it has the specific experience required by the agency.

PROCUREMENT

B-232015.2 Sept. 1, 1988

Bid Protests

88-2 CPD 204

Agency-level protests

Oral protests

Where original protest of solicitation improprieties was dismissed as untimely because it was not filed prior to bid opening, request for reconsideration on the ground that verbal complaints to the agency prior to bid opening constituted an agency-level protest does not warrant reversing dismissal; complaints must be written form to constitute an agency-level protest.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Request for reconsideration of the dismissal of a protest is untimely where it was filed more than 10 working days after the protester received notice of the dismissal.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-232270 Sept. 1, 1988
88-2 CPD 205

Protest against an award to a firm is academic where the award was not made to that firm but rather to another firm.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-232293 Sept. 1, 1988
88-2 CPD 206

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest that offeror did not have sufficient time to submit its proposal is dismissed as untimely when not filed prior to the closing date for the receipt of proposals. Protest is late even if there was not enough time to submit a pre-closing date protest since it was not filed within 10 working days after the closing date passed, that is, after the protester knew its proposal was not going to be timely.

PROCUREMENT
Bid Protests
Subcontracts
GAO review

B-232326 Sept. 1, 1988
88-2 CPD 207

General Accounting Office (GAO) will not review a proposed award by a second-tier subcontractor because the award is not by or for the government as required for GAO to review subcontractor protests.

PROCUREMENT

**Contract Management
Contract administration
GAO review**

**B-232326 Con't
Sept. 1, 1988**

A protest allegation that an agency improperly approved a value engineering change proposal is not for review by General Accounting Office since allegation involves a matter of contract administration.

PROCUREMENT

**Bid Protests
GAO procedures
Interested parties**

**B-232392 Sept. 1, 1988
88-2 CPD 208**

Protester who has not contested the contracting agency's determination that it is nonresponsible is not an interested party under General Accounting Office's Bid Protest Regulations to protest on other grounds the award of a contract to another.

PROCUREMENT

**Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties**

**B-231389 Sept. 2, 1988
88-2 CPD 210**

Protest based on alleged solicitation defect which is apparent prior to bid opening date must be filed before that date.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

B-231970 Sept. 2, 1988

88-2 CPD 211

Protest of specifications as unduly restrictive of competition, filed by a firm whose interest is that of a supplier, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and the General Accounting Office's implementing Bid Protest Regulations.

PROCUREMENT

Bid Protests

Interagency agreements

GAO review

B-232403 Sept. 2, 1988

88-2 CPD 212

Protest of an agreement between two agencies for one to do work that the protester thinks should be the subject of a competitive procurement is dismissed, since the General Accounting Office does not review the propriety of such interagency agreements as part of its bid protest function.

PROCUREMENT

B-230556 Sept. 6, 1988

**Competitive Negotiation
Federal procurement regulations/laws
Compliance**

PROCUREMENT

**Socio-Economic Policies
Small business set-asides
Partial set-asides
Use
Administrative discretion**

The Defense Fuel Supply Center's (DFSC) small business partial set-aside procedures for the acquisition of its fuel supplies, comply and are consistent with the Small Business Act, 15 U.S.C. 631 et seq., as well as other applicable Federal procurement laws and regulations. The DFSC procedures have been approved as deviations from applicable procurement regulations for over 20 years, and we previously considered these procedures as a reasonable exercise of DFSC's discretion. See B-168576(2), April 28, 1971 and B-171289, April 28, 1971.

PROCUREMENT

B-230580.2 Sept. 6, 1988

**Special Procurement
Methods/Categories
Federal supply schedule
Offers
Rejection
Propriety**

88-2 CPD 214

Noncompliance with solicitation provision requiring prices to be based on current published price list and substantial sales at those prices warrants rejection of an offer since the procuring agency needs the information to establish that price of items offered to be included on Federal Supply Schedule is most advantageous to the government.

PROCUREMENT B-231372.2 Sept 6, 1988
Competitive Negotiation 88-2 CPD 215
Offers
 Competitive ranges
 Exclusion
 Evaluation errors

PROCUREMENT
Competitive Negotiation
Offers
 Evaluation errors
 Prices

Agency's exclusion of protester's technically acceptable proposal, without considering price, violated Federal Acquisition Regulation § 15.609(a).

PROCUREMENT B-231686 Sept. 7, 1988
Competitive Negotiation 88-2 CPD 216
Contract awards
 Initial-offer awards
 Propriety

Award based on initial proposals to other than the lowest-priced offeror is proper where the lower offer is technically unacceptable and thus would not have been included in discussions had they been conducted.

PROCUREMENT
Specifications
 Brand name/equal
 specifications
 Equivalent products
 Acceptance criteria

Where a brand name or equal solicitation sets forth necessary design features, such as size or weight, in very specific terms, an offered equal product must meet them precisely in order to be found acceptable.

PROCUREMENT

B-231738 Sept. 7, 1988

Bid Protests

88-2 CPD 217

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest alleging apparent defects in a request for proposals is untimely where it was not filed prior to the closing date for receipt of initial proposals.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Incumbent contractors

An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Administrative discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-231828 Sept. 7, 1988
88-2 CPD 218

Protest that requirement for site visit is unduly restrictive is dismissed as academic where bids were opened after the protest was filed, and the protester's bid, based on no site visit, was the eighth lowest received; there thus is no reason to believe protester would move into line for award even if the protest were sustained and the requirement eliminated.

PROCUREMENT
Bid Protests
GAO procedures
Agency notification

B-232151.2 Sept. 7, 1988
88-2 CPD 219

Dismissal of protest for failure to file a copy with the contracting officer within 1 working day after filing with the General Accounting Office (GAO) is affirmed where agency did not receive copy until 13 working days after the protest was filed at GAO and otherwise did not have timely knowledge of the protest basis.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

B-232247.2 Sept. 7, 1988
88-2 CPD 220

Protest filed more than 10 days after protester received notice of adverse agency action on agency level protest is untimely and will not be considered by our Office on basis of allegation that contracting activity delayed or misled protester.

PROCUREMENT

Competitive Negotiation
Requests for proposals
Government estimates
Quantity variances

B-231439, et al.

Sept. 8, 1988

88-2 CPD 221

PROCUREMENT

Noncompetitive Negotiation
Contract awards
Sole sources
Propriety

Protest that agency improperly manipulated solicited quantities of aircraft control sticks and made an improper sole source award is denied where agency made award under basic ordering agreement to the only source qualified to produce the parts after repeatedly soliciting quotations from alternative sources and failing to receive acceptable alternative quotations. Quantity ordered was less than quantities previously solicited only because basic ordering agreement included a quantity limitation.

PROCUREMENT

Payment/Discharge
Shipment
Carrier liability
Burden of proof

B-197911.2 Sept. 9, 1988

A common carrier acknowledging its liability for damaging a shipment of household goods must pay the full cost of repairing that damage (up to the agreed limit of liability) even though some incidental pre-existing scratches to one item are also repaired in the process. However, the carrier is not liable for damage alleged to have occurred to another item but not shown to be greater than the pre-existing damage noted on the inventory at the time the goods were received by the carrier.

PROCUREMENT

B-230599.3 Sept. 9, 1988

Bid Protests

88-2 CPD 222

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration of prior decision is denied where the request contains no statement of the facts or legal grounds warranting reversal or modification, but merely restates arguments made by the protester and considered previously by the General Accounting Office.

PROCUREMENT

B-230912.3 Sept. 9, 1988

Contractor Qualification

88-2 CPD 223

Responsibility

Contracting officer findings

Bad faith

Allegation substantiation

Protest that agency acted in bad faith in finding protester nonresponsible is denied since the allegations upon which protest is based are without merit, and since protester has failed to meet its burden of proof.

PROCUREMENT

Contractor Qualification

Responsibility criteria

Organizational experience

Protest that contract award was improper because awardee did not meet definitive responsibility criteria for experience is denied since solicitation experience requirement was a proposal evaluation criterion, and the agency's consideration of the awardee's pre-incorporation experience was not improper.

PROCUREMENT

B-231348 Sept. 9, 1988

Sealed Bidding

88-2 CPD 224

Contract awards

Propriety

Price reasonableness

Even though the contracting agency was not at fault regarding the incumbent contractor's failure to receive the solicitation, contract award was improper where a comparison of the award price and the price in the option of the incumbent's contract--which the agency had decided not to exercise--shows that, despite certain differences in the two contract efforts, the contract price is unreasonably high.

PROCUREMENT

B-231474 Sept. 9, 1988

Specifications

88-2 CPD 225

Brand name specifications

Equivalent products

Acceptance criteria

Contracting agency reasonably found valve offered as alternate to specified brand-name model to be technically acceptable where the Products Offered clause in the solicitation permitted offers of alternates functionally interchangeable with the brand-name model, and the offer contained a drawing and descriptive literature showing compliance with the requirement for interchangeability.

PROCUREMENT

B-232038.2 Sept. 9, 1988

Bid Protests

88-2 CPD 226

GAO procedures

Protest timeliness

Deadlines

Constructive notification

Lack of actual knowledge of the filing deadlines is not a bar to dismissal of a request for reconsideration since the Bid Protest Regulations are published in the Federal Register and protesters are charged with constructive knowledge of the contents.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231025.6 Sept. 13, 1988
88-2 CPD 229

PROCUREMENT
Bid Protests
Non-prejudicial allegation
GAO review

Request for reconsideration of prior decision dismissing protest of contracting officer's failure to notify protester of identity of proposed awardee under a small business set-aside as required by regulation is denied since the Small Business Administration Regional Office subsequently determined that the awardee is a small business concern for this procurement and therefore the protester was not prejudiced by the procedural deficiency.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-231393 Sept. 13, 1988
88-2 CPD 230

Where the agency properly determined that the protester's bid did not represent the lowest evaluated total cost to the government and there are several other eligible bidder's whose total bid prices are lower than the protester's, the protester is not an interested party to protest that the awardee's bid was nonresponsive.

PROCUREMENT
Sealed bidding
Low bids
Rejection
Propriety

B-231393 Con't
Sept 13, 1988

Where the invitation required bidders to propose a "practicable" construction period to be used to determine the lowest evaluated cost to the government, the agency properly did not accept the protester's fifth-low bid, which was low under the solicitation's evaluation scheme, because the agency reasonably determined that the protester's proposed construction period was not "practicable" and the bid therefore did not in fact represent the lowest total cost to the government.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-231461 Sept. 13, 1988
88-2 CPD 231

Protest against a solicitation provision regarding the evaluation of an offeror's experience is untimely where the protester did not protest the alleged impropriety in the solicitation until after the closing date for the receipt of initial proposals.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

Exclusion of a proposal from the competitive range is proper based on significant informational deficiencies, the correction of which would have required a major revision to the proposal.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Late submission

B-231517 Sept. 13, 1988
88-2 CPD 232

Acknowledgment of amendment sent by commercial carrier cannot be considered when received after time set for bid opening, where the paramount cause of the late receipt was protester's failure to send amendment to bid depository and to indicate on delivery envelope that it contained a bid.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
GAO review

B-231610 Sept. 13, 1988
88-2 CPD 233

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Competency certification
GAO review

General Accounting Office will not review Small Business Administration (SBA) denial of a certificate of competency where the protester does not show either fraud or bad faith on the part of contracting officials, or that SBA failed to consider vital information bearing on the firm's responsibility.

PROCUREMENT **B-231653 Sept. 13, 1988**
Contractor Qualification **88-2 CPD 234**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Where contracting officer determined prospective awardee was responsible based on a positive preaward survey finding the firm's past performance difficulties resolved and its current performance satisfactory, and there is no showing that the determination was made in bad faith, there is no basis to object to the agency's affirmative determination of responsibility.

PROCUREMENT **B-231732 Sept. 13, 1988**
Bid Protests **88-2 CPD 235**
Premature allegation
GAO review

Protest concerning offeror's compliance with federal pesticide product registration requirements concerns a matter of responsibility, and is dismissed as premature where there is no determination of responsibility by the contracting officer.

PROCUREMENT
Competitive Negotiation
Alternate offers
Acceptance
Propriety

Protest that offeror of alternate product must submit test data proving that its product has the 24-month shelf life required by the RFP is denied where RFP did not require proven performance as a precondition of award.

PROCUREMENT B-231732 Con't
Competitive Negotiation Sept. 13, 1988
Requests for proposals
Evaluation criteria
Sample evaluation
Testing

Protester's contention that the product test it was required to conduct with respect to an earlier procurement should be required of alternate offeror on current solicitation is denied, because current solicitation contains no such testing requirement and proposals must be evaluated only on the basis of factors specified in the solicitation.

PROCUREMENT B-231769 Sept. 13, 1988
Bid Protests 88-2 CPD 236
Non-prejudicial allegation
GAO review

PROCUREMENT
Sealed Bidding
Bid opening
Delays

Where the delay of bid opening did not result in prejudice to any of the prospective bidders, no compelling reason exists to justify cancellation of the solicitation.

PROCUREMENT B-231906 Sept. 13, 1988
Competitive Negotiation 88-2 CPD 237
Use
Criteria

Agency decision to use negotiation procedures, in lieu of sealed bidding procedures to acquire mess attendant services, is justified where the contracting officer determines that discussions are necessary to ensure that offerors fully understand the services and the staffing required to adequately perform the contract.

PROCUREMENT **B-231969** **Sept. 13, 1988**
Contractor Qualification **88-2 CPD 238**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the procurement officials or that definitive responsibility criteria in the solicitation were misapplied.

PROCUREMENT
Sealed Bidding
Bids
Expiration
Reinstatement
Propriety

Bidder may be allowed to revive its bid and extend its bid acceptance period after the bid has expired where the bidder originally offered the minimum acceptance period requested by the agency and where revival of the bid would not compromise the integrity of the bidding system.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-232194 Sept. 13, 1988
88-2 CPD 239

PROCUREMENT
Bid Protests
Moot allegation
GAO review

Where a procuring agency renders a protest academic by taking the corrective action requested by the protester, the General Accounting Office has no legal basis on which to find the protester entitled to its protest costs.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232198.2 Sept. 13, 1988
88-2 CPD 240

Request for reconsideration of decision dismissing protest which principally concerned size status protests filed with Small Business Administration is denied where protester merely reiterates original arguments and does not show that prior decision was based on error of fact or law.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-232303.2 Sept. 13, 1988
88-2 CPD 241

Protest that agency was required by Federal Acquisition Regulation § 19.501(g) to issue solicitation as small business set-aside because previous requirement had been procured on that basis is dismissed where previous procurement was not a small business set-aside but instead was processed through the section 8(a) program under the Small Business Act.

PROCUREMENT **B-232440** **Sept. 13, 1988**
Bid Protests **88-2 CPD 242**
GAO procedures
Protest timeliness
10-day rule

Where protester knew basis for its protest prior to filing a Freedom of Information Act (FOIA) request for information concerning the procurement, protest filed more than 10 working days after the basis of protest was known, even though within 10 working days of protester's receipt of information pursuant to FOIA request, is untimely.

PROCUREMENT **B-219998.8** **Sept. 14, 1988**
Bid Protests **88-2 CPD 243**
GAO procedures
Preparation costs

Firm is not entitled to recover proposal preparation costs where it has not shown that the contracting agency acted improperly in canceling the solicitation.

PROCUREMENT **B-229620** **Sept. 14, 1988**
Payment/Discharge
Defaulted contractors
Reserve funds
Set-off
Retroactive compensation

The monetary claim involved in the Equal Employment Opportunity Commission's judgment against a defaulted government contractor represents a back pay award to two individuals. Since this claim is not a debt directly owed to the government, it is not the proper subject of a setoff.

PROCUREMENT**B-231488.2 Sept. 14, 1988****Socio-Economic Policies****88-2 CPD 244****Small business set-asides****Use****Justification**

Protest of agency failure to set aside entire acquisition for small business participation is denied where a large business on an established planning list under the Industrial Readiness Planning Program has indicated a desire to supply some or all of the required items by submitting an offer under a recent solicitation.

Protest of agency failure to set-aside a portion of an acquisition for small business participation is sustained because agency's rationale that the requirement is not severable into two or more economic production quantities is not supportable where the solicitation itself provides that the acquisition may be divided into three lots for purposes of making multiple awards.

PROCUREMENT**B-231598 Sept. 14, 1988****Sealed Bidding****88-2 CPD 245****Bids****Responsiveness****Additional work/quantities****Price omission**

Bid that acknowledges an amendment to a solicitation, but contains the original bidding schedule which was modified by this amendment to increase the quantity of a line item, is nonresponsive where the bid offers a unit and total price for the original lesser quantity but fails to include a price for the increased quantity since the bid does not represent a clear commitment to furnish the increased quantity at a specified price.

PROCUREMENT

B-231723 Sept. 14, 1988

Contract Management

88-2 CPD 246

Contract administration

Contract terms

Compliance

GAO review

Where a bidder takes no exception to the invitation's requirements, the bidder is obligated to provide a complying product upon acceptance of its bid; whether the bidder in fact meets its obligation is a matter of contract administration which the General Accounting Office does not review.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Determination criteria

A bid which takes no exception to the invitation's requirements is responsive, because it is an unqualified promise to provide the exact thing called for in the solicitation.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-232336 Sept. 14, 1988
88-2 CPD 247

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Negative determination
GAO review

Protest is dismissed as academic where contracting agency reverses decision--that protester is precluded from proposing use of a debarred subcontractor--which gave rise to the protest. Protester's contention that contracting agency improperly will consider subcontractor's debarred status as part of determining protester's responsibility is not for consideration by General Accounting Office (GAO) because the protester is a small business and any nonresponsibility determination will be referred to the Small Business Administration for a final determination of offeror responsibility which GAO generally will not review.

PROCUREMENT
Sealed Bidding
Low bids
Error correction
Price adjustments
Propriety

B-229991.2 Sept. 15, 1988
88-2 CPD 248

Protester's request for upward correction of its low bid for dredging work is denied where error was attributable to protester's incorrect assumption regarding the capacity of the scows used to tow away the dredged material.

Protester's request for correction of error in its low bid attributable to application of incorrect indirect cost markup to dredge is denied where protester has not furnished clear evidence as to its intended markup.

PROCUREMENT

B-231539 Sept. 15, 1988

Special Procurement

88-2 CPD 249

Methods/Categories

In-house performance

Cost evaluation

Government estimates

Computation errors

Protest against agency determination to continue in-house performance, based on cost comparison pursuant to Office of Management and Budget Circular A-76, is sustained where the agency used the wrong tax rate in calculating the protester's deduction for federal income tax revenue, and application of the correct tax rate results in the protester's contract cost, with conversion differential, being less than the government's estimate of in-house costs.

PROCUREMENT

B-231873 Sept. 15, 1988

Sealed Bidding

88-2 CPD 250

Bids

Responsiveness

Acceptance time periods

Deviation

When a bidder, either intentionally or by mistake, specifies in its bid an acceptance period that is shorter than the minimum period expressly required by the invitation for bids the bid is nonresponsive on its face and may not be corrected after bid opening.

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

B-231873 Con't
Sept. 15, 1988

Where an award was made under an invitation for bid (IFB) that was canceled and then reinstated, the agency did not act improperly in basing the award upon a review of only those bids received in response to the IFB, rather than issuing a new solicitation for its requirement for a lesser quantity of the item in question; the record shows that the agency obtained adequate competition and was able to meet its actual needs, and that both the IFB and the awardee's bid explicitly provided for the possibility of a contract for the reduced quantity.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-232359 Sept. 15, 1988
88-2 CPD 251

Protest contentions that evaluation criteria should be revised and that procurement should have been managed by agency regional office are untimely since the allegations involve solicitation defects which were apparent prior to the closing date for receipt of initial proposals and under Bid Protest Regulations were required to be protested prior to the closing date.

PROCUREMENT

B-232359 Con't

Bid Protests

Sept. 15, 1988

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

General Accounting Office (GAO) will consider an untimely protest under the significant issue exception to GAO's timeliness rules only where the protest involves a matter that has not been considered on the merits in previous decisions and which is of widespread interest to the procurement community.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Protest based on information provided to protester at debriefing which is filed at General Accounting Office more than 10 working days after debriefing is untimely.

PROCUREMENT
Sealed Bidding
Bids

B-231605.2 Sept. 16, 1988
88-2 CPD 252

Responsiveness
Price data
Minor deviations

PROCUREMENT
Sealed Bidding
Bids

Responsiveness
Price omission
Unit prices

Bid which did not contain unit prices as required by the solicitation is responsive when the price per unit can be determined by dividing the total price for the item by the estimated quantity, the bid commits the contractor to perform the exact thing called for in the solicitation at a fixed price and no other bidder is prejudiced by the agency's waiver of the defect as a minor irregularity.

PROCUREMENT

B-231733 Sept. 16, 1988

Specifications
Minimum needs standards
Competitive restrictions
Allegation substantiation
Evidence sufficiency

Solicitation for aircraft engine spare parts that reflects agency's minimum needs by imposing less stringent quality control standards than those required under protester's current contract for production of the aircraft engine, is not defective merely because the protester may be at a competitive disadvantage for the spare parts procurement because of the more stringent requirements under its manufacturing contract.

PROCUREMENT
Bid Protests
Cooperative agreements
GAO review

B-232518 Sept. 16, 1988
88-2 CPD 256

Protest against rejection of an application to participate in a non-profit program funded by an executive agency for the award of a cooperative agreement, will not be considered without a showing by the protester that a contract subject to the procurement statutes and regulations rather than a cooperative agreement was the appropriate instrument, or that a conflict of interest exists.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Subcontractors

B-208159.14 Sept. 19, 1988

Letter responds to Congressional inquiry regarding how our Office handles bid protests filed by potential subcontractors on government procurements and discusses our view that it would not be appropriate to expand our current jurisdiction over such protests.

PROCUREMENT
Noncompetitive
Negotiation
Contract awards
Sole sources
Propriety

B-231016.2 Sept. 19, 1988
88-2 CPD 257

Although the Competition in Contracting Act of 1984 mandates that agencies obtain full and open competition in their procurements through the use of competitive procedures, the proposed sole-source award of a contract is not objectionable under the statute where the agency reasonably determined that only one source could meet its needs within the governing time constraints.

PROCUREMENT
Small Purchase Method
Competition
Use
Criteria

B-231578 Sept. 19, 1988
88-2 CPD 258

Since the purpose of the small purchase procedures is to minimize administrative costs, a contracting officer is given broad discretion with respect to making small purchases, and the General Accounting Office therefore will not question a contracting officer's small purchase decision unless it is shown that it had no reasonable basis.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

B-231669.5 Sept. 19, 1988
88-2 CPD 259

General Accounting Office (GAO) will not consider a new protest of solicitation improprieties, even though received prior to the closing date for submission of proposals, where an earlier, virtually identical protest concerning the same solicitation had been dismissed as untimely because the protester failed to file its original protest with GAO within 10 working days of formal notification of initial adverse agency action denying its agency-level protest.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Letters of credit
Adequacy

B-231792 Sept. 19, 1988
88-2 CPD 260

Where letter of credit submitted as a bid guarantee incorporate terms that create uncertainty as to whether the letter would be enforceable against the issuing bank, the letter is unacceptable as a firm commitment within the meaning of the standard bid guarantee clause included in the solicitation, and the bid is nonresponsive.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

B-231831 Sept. 19, 1988
88-2 CPD 261

Protest that the eventual contractor will not supply acceptable items notwithstanding the contractual obligation to do so involves a matter of contract administration, which is the procuring activity's responsibility and is not reviewed under the Bid Protest Regulations.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Allegation substantiation
Evidence sufficiency

Protest alleging that revision to specification in solicitation is unduly restrictive of competition is denied where the contracting agency shows that revision is likely to increase rather than restrict competition and protester has presented no evidence showing that the specification is unreasonable.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-232281 Sept. 19, 1988,
88-2 CPD 263

Where, subsequent to the filing of a protest by the fifth low bidder of a contract award to the sixth low bidder, the contracting agency discovered errors in its initial evaluation of bids which mandated termination of initial contract and award to bidder that submitted the lowest bid price, protest has become academic and is dismissed.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

B-226395.2; B-226395.3
Sept. 20, 1988
88-2 CPD 264

Where awardee's technical proposal was superior to protester's and was 43 percent lower in cost than protester's, the agency properly concluded that there was no reasonable chance that protester could achieve significant cost reductions along with improvements in its technical proposal so as to be competitive with awardee's proposal and a competitive range of one was justified.

PROCUREMENT B-226395.2; B-226395.3 Con't
Competitive Negotiation Sept. 20, 1988
Requests for proposals
Terms
Ambiguity allegation
Interpretation

PROCUREMENT
Specifications
Ambiguity/allegation
Specification interpretation

A solicitation requirement is ambiguous only where it is susceptible to two or more reasonable interpretations. Where five patents were referenced at the end of the specifications and it was stated they "may apply to the design", "are supplied as examples" and "this list is not intended to constitute a complete patent search", the protester's inference that one common feature of the five patents was necessarily required by the solicitation is unreasonable.

PROCUREMENT B-230313.3 Sept. 20, 1988
Bid Protests 88-2 CPD 265
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of a decision denying a protest is denied where the protester has demonstrated no error of fact or law.

PROCUREMENT

B-231613 Sept. 20, 1988

Competitive Negotiation

88-2 CPD 267

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Where solicitation for test sets for the maintenance of aviation night vision devices provided that technical merit would be more important than price and emphasized the importance of simplicity of design, contracting agency did not act unreasonably in selecting for award a slightly higher-price proposal (lower-priced based on life-cycle cost) offering a less complex design (with fewer parts of low or moderate reliability) and a superior ability to test for inadequate night vision devices.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

Where perceived weakness in the protester's design, that it was unnecessarily complex and included too many parts of low or moderate reliability, was inherent in the design itself rather than in any failure to explain the design, and a significant improvement would require a complete redesign, than it does not appear that any lack of detail in the notice of the weakness provided during discussions deprived the protester of an opportunity significantly to improve its proposal.

PROCUREMENT

Bid Protests

Bias allegation

Allegation substantiation

Burden of proof

B-231693, et al.

Sept. 20, 1988

88-2 CPD 268

Protesters fail to show that procurement is tainted where there is no evidence in the record that the award was the result of favoritism or other improper actions by the contracting officials. Personal relationship between awardee and a member of the evaluation board does not create an appearance of impropriety warranting conclusion that procurement was necessarily tainted, particularly where the group of individuals involved in the services called for by the solicitation (land surveys in Alaska) is small, the alleged "gratuities" given by the awardee were modest in nature (two tickets to a local social function and a few pounds of coffee), and there is no evidence that the award decision was improperly influenced in any way.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Contracting agency acted properly in selecting a technically superior but higher priced proposal instead of protester's lower priced, technically inferior proposal where request for proposals specified that technical factors were considerably more important than price.

PROCUREMENT B-231693, et al. Con't
Competitive Negotiation Sept. 20, 1988
Offers
Competitive ranges
Exclusion
Administrative discretion

Contracting agency acted properly in excluding from competitive range a proposal which was marginally acceptable on technical grounds and significantly higher in price relative to other proposals and as a result has no reasonable chance at award.

PROCUREMENT B-232105 Sept. 20, 1988
Contractor Qualification 88-2 CPD 269
Responsibility
Contracting officer findings
Negative determination
Criteria

Contracting agency's determination that a bidder is nonresponsible is reasonable where bidder's individual sureties failed to disclose outstanding bond obligations and demonstrated a pattern of nondisclosure of such outstanding bond obligations.

PROCUREMENT B-232407 Sept. 20, 1988
Contractor Qualification 88-2 CPD 270
Responsibility
Contracting officer findings
Affirmative determination
GAO review

By awarding a contract, an agency has determined that the awardee is a responsible prospective contractor. The General Accounting Office will not review a challenge to that determination absent a showing of possible fraud or bad faith on the part of the contracting officials or an allegation of misapplication of definitive responsibility criteria that were contained in the solicitation.

PROCUREMENT

B-232450 Sept. 20, 1988

Bid Protests

88-2 CPD 271

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

To be considered timely, a protest filed with the General Accounting Office must be filed within 10 days of the protester's receipt of actual or constructive notice of initial adverse agency action when the protest was filed initially with the contracting agency.

PROCUREMENT

Competitive Negotiation

Contract awards

Propriety

The integrity of the competitive system precludes an award on a specification that is materially different from the one under which competition was held.

PROCUREMENT

B-232572 Sept. 20, 1988

Sealed Bidding

88-2 CPD 272

Bids

Bid guarantees

Omission

Responsiveness

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Bid guarantees

A bid accompanied by a bid bond on which no penal sum has been inserted is nonresponsive and must be rejected.

PROCUREMENT

B-231101.3 Sept. 21, 1988

Bid Protests

88-2 CPD 274

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

PROCUREMENT

B-231756 Sept. 21, 1988

Bid Protests

88-2 CPD 275

Premature allegation

GAO review

Speculative allegations that awardee made a mistake in its bid and that it will not be required to meet more stringent tolerance requirements are insufficient to form the basis of a protest.

PROCUREMENT

Sealed Bidding

Invitations for bids

Post-bid opening cancellation

Justification

Sufficiency

After bids have been opened and exposed, defective specifications for certain line items of metal strapping do not provide a compelling reason justifying cancellation of invitation for bids (IFB), where award under IFB will meet the government's needs without prejudice to other bidders.

PROCUREMENT

B-231479.2 Sept. 22, 1988

Competitive Negotiation

88-2 CPD 276

Discussion

Adequacy

Criteria

The general requirement for meaningful discussions in a negotiated procurement does not mandate that an agency tell an offeror that its price is too high where no technical proposals are submitted, award is to be based on price only, and the agency has no basis to think the firm's offered price is unreasonable. In such circumstances, the request for best and final offers in itself constitutes meaningful discussions.

PROCUREMENT

B-231637 Sept. 22, 1988

Competitive Negotiation

88-2 CPD 277

Requests for proposals

Evaluation criteria

Cost/technical tradeoffs

Weighting

Solicitation for a job order contract properly may emphasize technical or management factors over price.

PROCUREMENT

Socio-Economic Policies

Small business set-asides

Use

Administrative discretion

Protest that solicitation should be set aside for small businesses is denied where the record does not show that the contracting agency abused its discretion in determining that it did not have reasonable expectation of receiving acceptable proposals from at least two responsible small business concerns.

PROCUREMENT B-230579.3 Sept. 23, 1988
Socio-Economic Policies 88-2 CPD 280
Small businesses
Disadvantaged business set-asides
Contract awards
Pending protests

Agency is not required to withhold award to second low bidder pending appeal of Small Business Administration determination that low bidder is not a small disadvantaged business (SDB), rendering firm ineligible for award under SDB set-aside.

PROCUREMENT
Socio-Economic Policies
Small businesses
Disadvantaged business set-asides
Eligibility
Determination

Since the Small Business Administration (SBA) determines whether a firm is small and disadvantaged for purposes of eligibility for Department of Defense small disadvantaged business (SDB) set-asides, the General Accounting Office will not consider a protest that a firm was not awarded a contract under an SDB set-aside where the SBA has found the firm ineligible.

PROCUREMENT B-231671 Sept. 23, 1988
Sealed Bidding 88-2 CPD 281
Bids
Bid guarantees
Justification

Solicitation properly requires a bid guarantee where the minimum amount of work to be ordered under construction contract for repairs to and painting of government housing exceeds \$25,000, since under the Miller Act, the awardee must furnish performance and payment bonds, and by regulation bid guarantee is mandatory where those types of bonds are required.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232235.2 Sept. 23, 1988
88-2 CPD 282

Request for reconsideration is denied where protester does not show any error of fact or law in prior decision.

PROCUREMENT
Competitive Negotiation
Below-cost offers
Acceptability

B-232491 Sept. 23, 1988
88-2 CPD 283

A below-cost offer under a solicitation for a firm, fixed-priced contract is not legally objectionable where the contracting officer has determined that the firm is responsible, i.e., will be able to perform the contract.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Information submission
Submission time periods

Offeror's failure to furnish with its proposal evidence of its "experience, qualifications, financial responsibility and ability to execute the terms of the contract" does not render proposal unacceptable where the information was not to be considered in technical evaluation but, rather, was requested to assist agency in determining responsibility.

PROCUREMENT
Competitive Negotiation
Use
Criteria

B-232491 Sept. 23, 1988
88-2 CPD 283

Even where agency allegedly "promised" sole-source award to protester, agency acted properly in allowing other firms, including awardee, to submit proposals, thereby maximizing competition.

PROCUREMENT
Socio-Economic Policies
Labor standards
Supply contracts
Manufacturers/dealers
Determination

The General Accounting Office will not consider whether a bidder qualifies as a manufacturer under the Walsh-Healey Public Contracts Act; this is a matter for review by the Small Business Administration where small business is involved.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

B-232541.1 Sept. 23, 1988
88-2 CPD 284

Dismissal of protest as untimely is affirmed where on reconsideration additional information provided by protester does not establish that his protest at the General Accounting Office was filed within 10 working days of initial adverse action on his prior agency-level protest.

PROCUREMENT **B-232204** **Sept. 26, 1988**
Competitive Negotiation
Federal procurement regulations/laws
Revision
Contract award notification
Contractors

PROCUREMENT
Sealed Bidding
Federal procurement regulations/laws
Revision
Contract award notification
Contractors

In commenting on Item II of Federal Acquisition Circular 84-38, an interim rule revising Parts 5, 14, 15, 17 and 25 of the Federal Acquisition Regulation (FAR) to implement changes to the Agreement on Government Procurement, the General Accounting Office recommends that the FAR require agencies to provide unsuccessful bidders or offerors with notice of the award of a contract "promptly, but in no event later than 7 working days after award."

PROCUREMENT **B-232585** **Sept. 26, 1988**
Bid Protests **88-2 CPD 287**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest alleging that agency improperly rejected all bids received and converted the procurement to a negotiated one with an inadequate time for preparation of offers is dismissed as untimely where not filed until approximately 3 weeks after proposals were due and protester had learned it was not the successful offeror.

PROCUREMENT

B-231569 Sept. 27, 1988

Bid Protests

88-2 CPD 288

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of agency decision not to set a procurement aside for small business is untimely, since it was filed well after proposals were due.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Award to a higher-priced, technically superior offeror was not improper where the solicitation specifically advised offerors that technical factors were significantly more important than cost, and the agency's decision that the offer was worth the extra cost was not unreasonable.

PROCUREMENT

Competitive Negotiation

Offers

Cost realism

Evaluation

Administrative discretion

Where the solicitation advised offerors that proposals would be evaluated to assess the accuracy, reasonableness and realism of proposed costs and the probable cost to the government, the contracting agency's determination to increase two of protester's proposed costs for evaluation purposes was not unreasonable where the agency concluded that the protester, as a new firm, did not have an "experience basis" to support the explanation of its proposed escalation factors on direct labor, and no historical cost stability to give the agency confidence in the firm's proposed indirect labor rates.

PROCUREMENT **B-231569** **Con't**
Competitive Negotiation **Sept. 27, 1988**
Offers
Evaluation errors
Allegation substantiation

Protester's allegation that the contracting agency improperly evaluated proposals is without merit where the record shows that the evaluation comported with the solicitation's evaluation scheme, and that the agency's decision under the factors and subfactors specified by the protester were reasonable.

PROCUREMENT **B-231880** **Sept. 27, 1988**
Bid Protests **88-2 CPD 289**
GAO procedures
Interested parties
Direct interest standards

Where firm would not be in line for award were its protest sustained, protest is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT **B-231914** **Sept. 27, 1988**
Bid Protests **88-2 CPD 290**
GAO procedures
Interested parties

Third lowest offeror, which protests the evaluation of its and the awardee's proposals, is an interested party under GAO Bid Protest Regulations since it may be in line for award if the protest concerning the evaluation of its own proposal is sustained.

PROCUREMENT **B-231914 Con't**
Competitive Negotiation **Sept. 27, 1988**
Contract needs
Administrative discretion
Cost/technical tradeoffs
Cost savings

Where selection official reasonably regards technical proposals as essentially equal, cost or price may become the determinative selection factor.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

The determination of the merits of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the agency violated procurement statutes or regulations.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Weighting

Where the RFP does not indicate in relative terms the importance of cost and technical factors, it must be presumed that each will be considered approximately equal in weight.

PROCUREMENT B-231914 Con't
Contractor Qualification Sept. 27, 1988
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The General Accounting Office does not review an agency's affirmative determination of responsibility absent a showing of possible agency fraud or bad faith or misapplication of definitive responsibility criteria.

PROCUREMENT B-229921.6 Sept. 27, 1988
Bid Protests 88-2 CPD 291
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where there is no showing that prior decision may have been based on factual or legal errors; allegations that agency acted improperly when responding to the bid protest are irrelevant to the propriety of the award, the issue considered by the General Accounting Office.

PROCUREMENT

B-217933.2 Sept. 28, 1988

Sealed Bidding

Federal procurement regulations/laws

Amendments

Bids

Submission

General Accounting Office favors the proposed changes to Federal Acquisition Regulation (FAR) Parts 2, 14, 15, and 52 which (1) require that before a late bid sent by certified or registered mail 5 days before bid opening may be considered for award, the date the bid was mailed must be established by a postmark on both the envelope and the sender's receipt; (2) provide for a 2-day late bid rule for bids mailed by U.S. Postal Service Express mail Next Day Service; (3) provide separate late bid rules for bids outside the U.S. and Canada; (4) allow contracting officers the option of permitting the use of facsimile equipment for the submission of bids, acknowledgments, modifications or withdrawals; and makes corresponding changes pertinent to contracting by negotiation.

PROCUREMENT

B-231480.3 Sept. 28, 1988

Specifications

88-2 CPD 292

Minimum needs standards

Competitive restrictions

Allegation substantiation

Evidence sufficiency

Protest that specification is in excess of contracting agency's minimum needs and is unduly restrictive of competition is denied where protester, while disagreeing with agency analysis, fails to show that agency lacked reasonable basis for requiring that an automatic exhaust fan shut-off be installed with stovetop fire extinguishing devices for kitchens in military family housing.

PROCUREMENT
Bid Protests
Forum election
Finality

B-231668.2 Sept. 28, 1988
88-2 CPD 293

Protester that filed earlier protest with the General Services Administration Board of Contract Appeals may not elect to file subsequent protest involving the same procurement with the General Accounting Office.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-231786 Sept. 28, 1988
88-2 CPD 294

Allegation that solicitation's instructions to offerors proposing alternate products were unduly vague is untimely where not raised until after closing date for receipt of initial offers.

PROCUREMENT
Noncompetitive Negotiation
Alternate offers
Rejection
Propriety

In a sole-source procurement which is justified on grounds that only one responsible firm can meet the agency's requirements, the agency may properly reject an alternate offer without conducting discussions where the alternate offer is so technically deficient that the agency cannot reasonably assess whether the offered product will adequately fulfill its needs.

PROCUREMENT
Small Purchase Method
Quotations
Evaluation errors
Burden of proof

B-231859 Sept. 28, 1988
88-2 CPD 295

Small purchase procurement must be conducted consistent with the concern for fair and equitable competition inherent in any competition. Protester has the burden, however, of showing that the evaluation was unreasonable; burden is not met where protester merely disagrees with the procuring agency and fails to show that the agency's evaluation of quotations was unreasonable.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232059.2 Sept. 28, 1988
88-2 CPD 296

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

B-232553 Sept. 28, 1988
88-2 CPD 297

Where a request for quotations did not require technical evaluation of offerors' ability to meet proposed delivery schedule, the matter is one of responsibility. By awarding the contract, the agency has determined a firm to be responsible and the General Accounting Office will not review a challenge to the affirmative determination except in circumstances not present in this case.

PROCUREMENT B-229831.4; B-229831.5
Competitive Negotiation Sept. 29, 1988
Contract awards 88-2 CPD 298
Propriety

Since the General Accounting Office review confirms that awardee's proposal conforms to the solicitation's labor hour requirements, notwithstanding protesters' contrary allegations, an award based on this proposal was proper.

PROCUREMENT B-231807 Sept. 29, 1988
Noncompetitive Negotiation 88-2 CPD 299
Contract awards
Sole sources
Propriety

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) is not objectionable where the agency reasonably determined that only one source could provide the required technical services for the inspection and overhaul of a turbine generator since the contracting agency does not possess or have rights in the technical data necessary for a competitive procurement and the protester has not shown that performance could be accomplished without such data.

PROCUREMENT

B-232508.2 Sept. 29, 1988

Bid Protests

88-2 CPD 302

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration is denied where protester raises no new factual or legal arguments which were not previously considered.

PROCUREMENT

B-232588 Sept. 29, 1988

Contractor Qualification

88-2 CPD 303

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Solicitation requirement that "contractor" perform services does not prohibit an awardee from having a qualified employee perform the contract. Whether the awardee will be able to perform as required concerns the awardee's responsibility. The General Accounting Office will not review affirmative determinations of responsibility except in certain limited circumstances not applicable here.

PROCUREMENT

B-101404.3 Sept. 30, 1988

Payment/Discharge

Contract terms

Contract amounts

Records access

Waiver

CG concurs in request to omit "Examination of Records by Comptroller General" clause (FAR 52.215-1) from proposed contract with organizer of the 6th Annual International Food and Drink Show (IFE89) where contract cost is based on fixed, published rates applicable to all in like circumstances.

PROCUREMENT

B-231802 Sept. 30, 1988

Competitive Negotiation

88-2 CPD 304

Contract awards**Propriety**

Where the request for proposals stated that the contract would be awarded to the offeror that submitted "an acceptable proposal with the lowest adjusted price," the contracting agency properly selected the proposal that: (1) was evaluated as meeting all mandatory requirements; (2) offered more of the requested enhancements than any other competitor; and (3) offered a total fixed-price that was almost \$7 million below the protester's and an evaluated total price that was approximately \$9.7 million below the protester's.

PROCUREMENT**Competitive Negotiation****Offers****Evaluation****Technical acceptability**

Protest that the awardee's proposal did not meet the solicitation's electrical requirement is denied, where: (1) the contracting agency reports that the protester has misinterpreted the specification and that the awardee's proposal does meet it; (2) the awardee's proposal fulfills the agency's actual needs; and (3) the protester has not been competitively prejudiced, because it would not have been able to lower its \$7 million higher price sufficiently to supplant the awardee as the lower-priced offeror even if the agency had clarified the requirement for the protester in a solicitation amendment.

PROCUREMENT

B-231918 Sept. 30, 1988

Sealed Bidding

88-2 CPD 305

Invitations for bids

Post-bid opening cancellation

Justification

Competition enhancement

Cancellation of invitation for bids (IFB) after bid opening was proper where agency reasonably determined that IFB did not provide clear and concise bid submission instructions so that four bids were submitted to the incorrect agency office.

PROCUREMENT

B-232026 Sept. 30, 1988

Specifications

Minimum needs standards

Competitive restrictions

Allegation substantiation

Evidence sufficiency

Protest that agency requirement that maximum power consumption for solicited computer equipment cannot exceed 5 kilo-volt amps (KVA) unduly restricts competition is denied where agency explains that the limitation on power consumption is necessary because only 5 KVA is available on their uninterrupted power source system.

PROCUREMENT

B-232182 Sept. 30, 1988

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Comments timeliness

Protest is dismissed for failure to file timely comments to agency report where protester did not fulfill its obligation to notify the General Accounting Office, within required timeframe, that it had not received the report.

Bid Protests

GAO procedures

GAO decisions

Reconsideration

The General Accounting Office Bid Protest Regulations do not permit a piecemeal presentation of evidence, information or analysis. Where a party submits in its request for reconsideration an argument that it could have presented at the time of protest, but did not, the argument does not provide a basis for reconsideration.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS **B-216218** **Sept. 6, 1988**
Federal Administrative/Legislative Matters
Congress
Authority delegation
Administrative agencies

Property Clause of Constitution (Article IV, section 3, clause 2) provides Congress with authority to require seat belt use in national parks. Pursuant to 16 U.S.C. § 3, Congress has delegated its authority under Property Clause, as it applies to national parks, to Secretary of the Interior who, relying on that authority, could issue regulation requiring seat belt use in parks. B-216218, November 30, 1984 reaffirmed.

MISCELLANEOUS TOPICS
Federal Administrative/Legislative Matters
Executive orders

Seat belt requirement for those traveling in national parks could be imposed by the President through executive order. Although authority to regulate activities in parks has been vested in Secretary of the Interior, 16 U.S.C. § 3, an executive order could require Secretary to exercise this authority. Such an executive order would not appear to be incompatible with express or implied will of Congress. See Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 637 (1952).

MISCELLANEOUS TOPICS **B-226708 Sept. 6, 1988**
Federal Administrative/Legislative Matters
Administrative agencies
Definition

The Federal Home Loan Bank System Publication Corporation and the Bank System Office of Education have a clear existence outside of the Bank Board itself and are not subject to plenary control by the Bank Board. Therefore, GAO agrees with the Bank Board that the employees of these two entities should not be regarded as federal employees subject to title 5 of the United States Code.

MISCELLANEOUS TOPICS
Federal Administrative/Legislative Matters
Government corporations
Determination

The Federal Asset Disposition Association (FADA) purports to be a federal savings and loan association established under section 406 of the National Housing Act. Therefore, its employees are not regarded as being federal employees subject to title 5 of the United States Code. However, FADA performs none of the basic functions of a federal savings and loan association and its stock is owned entirely by federal agencies. Therefore, GAO concludes that FADA cannot properly be regarded as a federal savings and loan association under section 406. Even if FADA could be regarded as a federal savings and loan association, it is, in fact, a corporation chartered by the federal government which is also wholly owned by the federal government. Therefore, its employees should be regarded as federal employees subject to title 5 of the United States Code.

MISCELLANEOUS TOPICS **B-231257 Sept. 8, 1988**
Federal Administrative/Legislative Matters
Information disclosure
Statutory regulations
Computer equipment/services
Security safeguards

Office of General Counsel memorandum to IMTEC discussing key terms of the Computer Security Act of 1987, which requires federal agencies to protect against the unauthorized modification of disclosure of sensitive information in their computer systems. Public Law 100-235, January 8, 1988, 100 Stat. 1724. The key terms that are addressed are: (1) federal agency, (2) computer system, (3) Federal computer system, and (4) sensitive information.

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